

COURT OF APPEALS  
DIVISION II

2021 MAY 28 PM 3:26

STATE OF WASHINGTON

BY  OFFICE

No. 55588-3-II

COURT OF APPEALS DIVISION II  
FOR THE STATE OF WASHINGTON

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Percy Newby,  
Appellant

v.

Jamie Wallin,  
Appellee

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ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT

Case No. 20-2-30586-34

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APPELLANT'S BRIEF

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## ASSIGNMENT OF ERROR

1. Did the District Court err when it issued an order for Appellant to surrender his arms without Appellant having either notice or opportunity to defend himself, in violation of the protected 2nd and 6th Amendments to the Constitution for the United States and Washington Constitution Article 1; Section 24. The Right to Bear Arms: "The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired"

2. Did the District and/or Superior courts err when neither the court nor Appellee gave Appellant notice of any of the complaints against him?
3. Was Appellants rights to due process of law violated when Appellant was not notified of any of the complaints against him?
4. Did the Superior court err when the court kept postponing Claimants hearings and denying Appellant his right to keep and bear arms, protected under the 2nd Amendment without being found guilty of anything?
5. Did the court err when it decided to expedite the proceedings instead of hearing all the facts from the witnesses?
6. Did the court err when it decided to limit the number of Appellants witnesses and the time it would take to hear them?
7. Did the Superior court err when it failed to hear Appellants witnesses that were present in the court possessing relevant information and knowledge to testify and support Appellants statements?
8. Did the Superior court err, when it was more concerned with the time it would take to hear all the facts to get to the bottom of the matter and to dispense justice, than the next scheduled case coming up?
9. Was Appellants rights to due process of law violated when court determined that there was not enough time to hear Appellants witnesses testify to support the Appellant?
10. Did the court err when the court accepted the statements of Appellee as fact without hearing from Appellants six witnesses?
11. Did the court err when it was advised that there was a Federal District case ruling that Lawn Limited did not own the property in question and was advised of the ruling and case number.
12. Was Appellants rights to due process of law violated when court rushed Appellant to judgement?
13. Were Appellants 2nd Amendment protected Rights violated when the court ordered Appellants weapons to be seized by the Sheriff without a court hearing, where Appellant could participate and defend himself?

14. Did the court err when the court ordered Appellants weapons be surrendered for a year, even though no weapons were in use and Appellant had a right to keep and bear weapons protected under the 2nd Amendment?
15. Did the court err when the court apparently determined that it was harassment to call the Sheriff on Appellee when Appellee was engaged in several thefts, break-ins, destruction of Appellants property, burglaries, and unlawful ejection of residents?
16. Did the court err when it failed to consider any of Appellants issues in his counter-claim regarding Wallins perjurous statements in this case?

#### Issues Pertaining to The Assignments of Errors

Whether the trial court abused its discretion in not taking into consideration that Federal District court case number 3:18-cv5978-RBL had ruled that neither Mr. Wallin nor Lawn Limited owned the property in question as Mr. Wallin falsely claimed to the trial court. (See: Transcripts page 14 Line 2 through 7, line 16 through 24, Page 24 line 23 through 25 and page 25 line 1)

Whether the trial court abused its discretion when it presumed that Mr. Wallin was telling the truth when he claimed to own Appellants storage container.

Whether the trial court abused its discretion when it presumed that calling the Thurston County Sheriff on Mr. Wallin when he was breaking, entering and stealing Appellants property on Appellants property amounted to harassment.

Whether the trial court abused its discretion when it refused to hear Appellant witnesses testify to the truth of the matter.

Whether the trial court abused its discretion when it told the Appellant that he could not bring any more issues related to this case before the court for a year.

Whether the trial court abused its discretion when it ordered the Appellants weapons seized even though Appellant has a right to keep and bear weapons and Appellant

was acting lawfully and had committed no crime. (See: transcripts Page 13, line 12 through 17.)

Whether the trial court abused its discretion when it refused to consider any of Appellants issues in Appellants counter-claim regarding Mr. Wallins perjurious statements to the court. (See: Transcripts page 17 Line 22 through 25, Page 18 line 1 through line 5 and page 21 lines 10 through 21.)

Whether the trial court abused its discretion when it assumed that Mr. Wallin was telling the truth relating to the alleged surveillance of him by Appellant when Wallins' evidence showed that the camera was not pointed toward his motorhome as he falsely stated, it was aimed at the front gate, in the opposite direction and could have been verified by Appellants witnesses. (See: Page 22 line 24 and Page 23 line 1 through 3)

Whether the trial court abused its discretion when it decided to allow only 10 minutes to hear the case on October 7, 2020. (See: Page 10 line 16 through 22).

Whether the trial court abused its discretion when it assumed that Percy Newby had been served all of Wallins' amended or refiled documents when that wasn't the case.

Whether the trial court abused its discretion when it assumed that Mr. Wallin was telling the truth regarding the ownership of the beehives, which was false and could have been verified by all of the Appellants witnesses. (See: Page 23 line 7 through 13)

#### INFORMATIONAL STATEMENT AND JURISDICTIONAL STATEMENT

This appeal is taken from the Superior court's decision to render judgment against the defendant/appellant. The Appellate Court of Washington has jurisdiction to consider the issues raised in this appeal under authority of the Washington Rules of Appellate Procedure, Rule 2.2 or Rule CrR 7.8 RELIEF FROM JUDGMENT OR ORDER or Other reason for relief: Fraud or an order affecting a substantial right

under RAP 2.2(13) or RAP 2.3 (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act.

Appellant has newly discovered evidence under Rule 60 (b)(3) The evidence is:

1. Federal District Court Case No. 3:18-cv-05978-RBL, United States Motion to Stay the Order of Foreclosure of the Yelm Property for an additional 6 months. (Exhibit A); showing that Appellant is the true owner of the property. (See: Page 1 line 19 through 23)
2. Old Republic National Insurance Company Property Analysis Report guaranteeing Ownership to Appellant. (Exhibit B)
3. Quick Claim Deed dated February 26, 2022<sup>1</sup> transferring 15011 119<sup>th</sup> Way Property to Percy Newby. (Exhibit C)

#### **Statement of the Case**

This appeal is taken from the District and Superior court's decision to render judgment against the defendant/appellant regarding harassment.

Appellant was found to have harassed Appellee by calling the Sheriff several times on Appellee when Appellee was forcing entry onto Appellants property, stealing Appellants personal property and breaking and entering into Appellants buildings and was forced to move off Appellants property in order to keep the requested 1000' away from Appellee and Appellants arms were seized.

Appellant has been denied by the court, to petition the court for further relief for one year after the court issued an order directing Appellant to remove his personal property over an 8-hour period. Appellant was unable to do so in the time granted and Appellant is the owner of the property in question and is denied the use and enjoyment of his property.

Appellant, Mr. Newby is a Defendant in a Federal District Court Case, Civil Action No. 3:18-cv5978-RBL in which the Department of Justice and the Federal District Court determined that Mr. Newby owned a parcel of land located at 15011 119<sup>th</sup> Way

SE in Yelm, Washington and that Lawn Limited did not own it. (Newly discovered evidence)

The Department of Justice specifically denied that the land was owned by Lawn limited, the company which Jamie Wallin falsely claims owns the property and Wallin claims he is the landlord for. (Newly discovered evidence)

Wallin had attempted to illegally remove Appellants tenants, and the appellant from Appellants property and was unsuccessful. (see Transcripts page 16-line 25 and page 17 line 1 and 2)

When Wallin failed in his efforts to remove Appellant and his tenants from Newby's property, Wallin resorted to perjuring himself to the District and Superior Courts of Thurston County and falsely, numerous times claimed that Newby, the Appellant did not own the property and was harassing him on property Wallin claimed to own and had locked him off Wallins property. See Transcripts page 14 line 2 through 7, 16 through 17.

Wallin knew that neither he nor Lawn Limited owned the property at 15011 119<sup>th</sup> Way SE, Yelm, WA and knew there was a judgment rendered against Lawn Limited and its claimed ownership, pursuant to Case No. 3:18-cv5978-RBL, as he, in bad faith had defaulted in answering, yet Wallin managed to persuade the Superior Court judge that it was Lawn Limited's property anyway.

Wallin further persuaded the court that Appellant somehow was intimidating him by exercising his right to carry his gun in a holster on Newby's property which is a protected constitutional right (See Transcripts page 13 line 15 through 17) and harassing him by calling the Sheriff when Wallin was cutting locks off Appellants buildings and breaking and entering and stealing Appellants and Appellants tenant's property. (See Transcripts page 13 line 12 through 15)

### **ARGUMENT**

Had the court heard the testimony of Appellants witnesses, which were present in the court at every scheduled hearing, the court would have come to a completely different conclusion with all of Percy Newby's facts verified by those witnesses.



Neither the lower courts nor Mr. Wallin afforded the Appellant the opportunity to defend himself before ordering his arms seized, therefore violating his right to due process of law.

Mr. Wallin knowingly lied and perjured himself to the court numerous times on several occasions in order to force Appellant and Appellants tenants off his own property and deny him and his tenants' access to Appellants property and possessions that continue to this day. (See: Percy Newby's counterclaim for perjury.)

The court refused to hear any of the witnesses on the excuse of expediting the hearings and did not have all the facts to make an informed decision and the Appellant wanted to call for them to testify and the witnesses were present at all the hearings to testify. (See: Transcripts Page 6 line 25, page 7 line 1 through 25, page 8 line 1 through 25 and page 8 line 1 through 22.

The court has refused to consider any new filings in this case by Appellant regarding access to his possessions or property and the Appellant now has to file a new suit for an ejectment action against Wallin to access his property and possessions.

The court has unlawfully denied Appellant his rights to his property and possessions that are located on his property and has caused Appellant to spend thousands of dollars to hire a trucking company to move some of his possessions off his property and relocate them to another residence while a trespasser (Wallin) is allowed to unlawfully force the true owner off his property and continue to reside and use Appellants property without consequences.

### **CONCLUSION**

The lower District and Superior courts violated Appellants right to due process of law by "expediting" the hearing process and refusing to hear the witnesses that would have supported Appellants testimony regarding Wallins numerous perjurous statements.

The court also violated Appellants substantive due process rights protected under the 2<sup>nd</sup> 5<sup>th</sup> and 14<sup>th</sup> Amendments to property and arms. Property rights are among the most basic rights in a free society and Appellant has been denied his rights to his



property and to defend himself against people like Wallin who would abuse the legal system for his personal gain.

Appellee admittedly filed several anti-harassments claims against Appellant before finally succeeding on his third attempt on 09/22/2020, by falsely claiming there was an emergency, falsely claiming Wallin was the landlord, misrepresenting the material facts and perjuring himself multiple times to the court, after Appellees several failed attempts to evict Appellant and Appellants tenants from Appellants own property.

Appellant was never noticed of any of Wallins previous complaint hearings nor afforded the opportunity to respond or to defend himself before his protected rights were suspended, as a result, Appellants 2<sup>nd</sup> Amendment Rights were violated and his right to face his accuser under the 6<sup>th</sup> Amendment were violated before having his weapons seized.

Appellee also failed to provide Appellant copies of documents Appellee filed with the Superior Court and District Court and failed to disclose to the Superior court which specific documents he mailed to Appellant.

The purpose for Appellee's anti-harassment claim was to remove Appellant and all occupants from Appellants property any way possible, so the Appellee could take over Appellants' property thereby violating Appellants rights to his property and possessions in order for the Appellee to steal them.

Appellee admitted that he is trying to remove Appellant from the property. See page 5 of Wallins' case update filed and dated 10/05/2020, and his photo exhibits and testimony seriously misrepresented the facts.

Appellee also failed to serve Appellant copies of documents filed on 10/28/2020, the same day as the last Superior Court hearing.

Thereafter, at the end of the day, Commissioner Kortokrax verbally stated that Appellant could retrieve his effects from the property over the holiday weekend but failed to issue such an order to Appellant in writing and when Appellant went to retrieve his effects and called the Sheriff to that effect, the Sheriff told Appellant that he would be arrested as he did not have such an order in his possession.

Appellant had arranged for a trucking company vehicles and people to assist and had to cancel the retrieval of his personal property.

Appellant then moved the court for an order to retrieve his personal property and was not given enough time to retrieve all his effects and property. Appellant was also told that he was barred from petitioning the court for any other amendments for another year. As a result, Appellants personal effects still remain on his property for Appellee to use, steal or dispose of.

If the Superior Court judges had taken the time necessary to hear all the facts in this case, Appellant believes the case would have had a different outcome.

Appellee did not come to the court with clean hands and abused both the rights of Appellant and the legal system and Commissioner Kortokrax by not hearing Appellants six witnesses, did not have all the facts to make an informed decision. As a result, Appellant was rushed to judgment and has been forced off his own property due to the Appellees numerous perjuries which would have been corroborated by Appellants witnesses.

Appellee, Jamie Wallin, also unlawfully attempted to evict Silverwater Company from Appellants property on September 18, 2020 and filed an Unlawful Detainer action against them on September 29, 2020, Case No. 20-2-02110-34 where he also falsely claimed to be the Landlord and the owner of the property but was unsuccessful and lost in court.

Appellee Jamie Wallin has also filed an Unlawful Detainer complaint against William Schmidt, Case No. 20-2-02475-34, on December 17, 2020, and perjured himself in that case as well, Claiming to be the landlord or the landlords representative, but has failed to follow up as Appellee and his family circumvented the Governors eviction mandate relating to the Covid 19 pandemic by forcefully and physically removing Schmidt and his possessions from Appellants building that he was staying in, then Appellee locked Schmidt out of Appellants property and rendered Schmidt homeless. Appellant filed a counter-claim for perjury against Appellee and had multiple Affidavits and witnesses to testify in support of Appellant but the court in its efforts to conserve time and meet their schedules, rushed Appellant to judgment, refused to hear the witnesses, then ruled against Appellant.

## ARGUMENT



There was no crime committed by Appellant that would warrant the seizure of his weapons in violation of the protected 2nd Amendment Rights protected by the Constitution for the United States and Section 2 of the Washington Constitution Article 1; Section 24.

Washington Constitution SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

Washington Constitution SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Washington Constitution SECTION 10 ADMINISTRATION OF JUSTICE.

Justice in all cases shall be administered openly, and without unnecessary delay.

Washington Constitution SECTION 24 RIGHT TO BEAR ARMS. The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

Washington Constitution Section 29 CONSTITUTION MANDATORY.

The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

### **RELIEF**

Ideals of substantial justice and fair play, as well as proper administration of the rules of court, justly require reversing the decision of the Superior Court decision be overturned and dismissed.

Respectfully submitted,

5-28-21 P Newby

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COURT OF APPEALS  
DIVISION II  
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APPELLATE COURT OF WASHINGTON DIVISION II

Percy Newby,

Appellant,

No. 55588-3-II

CERTIFICATE OF SERVICE

vs.

Jamie Wallin,

Appellee

I certify under penalty of perjury under the laws of the State of Washington that, on the date(s) stated below, I did the following:

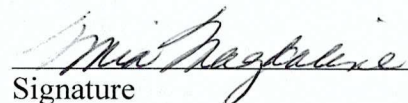
On the 28th day of May, 2021, I

☒ mailed by regular U.S. Mail, postage prepaid; or

☐ hand-delivered

a true copy of Appellants Appeal Brief to Jamie Wallin at the following address: 18324 Cook Rd SE, Yelm, WA 98597.

Dated this 28th day of May, 2021, at Puyallup, Washington.

  
Signature

Mia Magdaline